

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL MCLEAN,

Defendant-Appellant.

UNPUBLISHED
February 21, 2013

No. 308268
St. Clair Circuit Court
LC No. 07-001691-FH

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of one count of larceny by false pretenses over \$20,000, MCL 750.218(5)(a), two counts of larceny by conversion between \$1,000 and \$20,000, MCL 750.362; MCL 750.356(3)(a), and two counts of delivering a check for over \$500 having insufficient funds for payment, MCL 750.131(3)(c). Defendant was originally sentenced as a fourth habitual offender, MCL 769.12, to serve concurrent terms of 76 months to 20 years in prison for the larceny by false pretenses conviction, 4 to 20 years in prison for each of the two larceny by conversion convictions, and 2 to 15 years in prison for the bad check convictions. Defendant was also ordered to pay \$52,600 in restitution.

On appeal, defendant raised several arguments, all of which were rejected except for his assertion that the trial court erred in scoring 10 points for offense variable (OV) 10, and that his due process rights were violated when the court failed to inform him that it would be conducting a contempt hearing during his arraignment on a bench warrant issued for failing to appear at an earlier sentencing hearing. *People v McLean*, unpublished opinion per curiam of the Court of Appeals, issued September 13, 2011 (Docket No. 294358). The Court vacated his contempt conviction and remanded for resentencing. *Id.*

On remand, defendant was again sentenced as a fourth habitual offender to prison terms of six years, four months to 20 years for his larceny by false pretenses conviction, four to 20 years for both counts of larceny by conversion, and two to 15 years for both bad check counts. Defendant again appeals by right and we affirm.

Defendant's sole argument is that the trial court erred in not holding a restitution hearing. Defendant's argument must be rejected under the law of the case doctrine, which provides, "if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a

subsequent appeal in the same case where the facts remain materially the same.” *Sinicropi v Mazurek*, 279 Mich App 455, 464; 760 NW2d 520 (2008) (citation omitted). This Court held in defendant’s first appeal that the trial court did not abuse its discretion in accepting the \$52,600 figure without holding an evidentiary hearing. Because the facts with respect to this issue have not materially changed, this Court’s prior decision is the law of the case. *Id.*

Moreover, when a defendant files a second appeal by right following a remand and resentencing after the first appeal by right, “the scope of the second appeal is limited by the scope of the remand.” *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). As a result, the issue is not properly before the Court.

We affirm.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Karen M. Fort Hood